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PATENT

#3085
S3105

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Andrew H. Cragg et al. : Art Unit: 3731
Serial No.: 08/461,402 : Examiner: Milano, Michael J
Filed: 06/05/1995 :
For: BIFURCATED ENDOLUMINAL :
PROSTHESIS

RESPONSE

RECEIVED
MAY 29 2003
TECHNOLOGY CENTER R3700

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

S I R :

In response to the Office Action dated January 16, 2003, please consider the following remarks.

REMARKS

Ex parte prosecution of this application was suspended in Paper No. 12, issued August 27, 1997, in view of a potential interference. Interference No. 104,192 was declared on April 23, 1998, and involves this application. The decision of the Board in that interference is currently on review in a civil action brought under 35 U.S.C. § 146 in the United States District Court for the District of Columbia (Civil Action No. 01CV 2015(RJL)).

In view of the pending § 146 action seeking review of the decision of the Board, and the fact that any action by either the District Court or perhaps ultimately by the Court of Appeals for the Federal Circuit will be binding on the Patent and Trademark Office in the matter of this application, continued suspension of this application is appropriate.

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The Board was informed of the above action in the Declaration of Thomas E. Friebe in Support of Cragg *et al.* Petition Under 35 U.S.C. §135(c) and 37 C.F.R. §1.666(c), dated March 21, 2002 (¶7) and the Declaration of Joshua L. Cohen in Support of Cragg *et al.* Petition Under 35 U.S.C. §135(c) and 37 C.F.R. §1.666(c), dated March 15, 2002 (¶4). To confirm this prior notification, a separate paper styled "CRAGG *ET AL.* NOTICE OF LITIGATION PURSUANT TO 37 C.F.R. §1.660" is being filed concurrently with the Board of Patent Appeals and Interferences.

Inasmuch as the office action of January 16, 2003 does not appear to have been sent to the other parties to the above identified interference, this Response is considered to be an *ex parte* communication that does not require service pursuant to 37 C.F.R. § 1.646(a). Therefore, this Response is not being served upon the other parties to Interference No. 104,192. The Examiner is requested to inform applicants' undersigned attorney if this communication should be served on those other parties.

Conclusion

For the foregoing reasons, applicants contend that suspension of this application should be continued. Accordingly, a notice of continued suspension is respectfully requested.